APPEAL NO. 022229
FILED OCTOBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Following a contested case hearing held on August 5, 2002, the hearing officer made certain findings of fact and concluded that the respondent (claimant) sustained a compensable injury on _____; that the claimant has had disability from January 7, 2002, through the date of the hearing; and that the claimant is entitled to change treating doctors from Dr. F, to Dr. A pursuant to Section 408.022. The appellant (carrier) has filed an appeal, challenging the sufficiency of the evidence to support the hearing officer's substantive factual findings and the conclusions of law. The claimant has filed a response, urging that the evidence is sufficient to support the challenged factual determinations.

DECISION

Affirmed.

The claimant, a welder and iron worker, testified that on _____, a Saturday, while pushing and pulling on a section of crane boom to get it into alignment for securing with pins, he felt a pop, and had pain in his low back; that he immediately reported the injury to the foreman and a supervisor at the worksite; that he finished the shift just doing the flagging to the crane operator and went home; and that he had severe pain over the weekend and was taken to a doctor by his wife on Monday, _____. He said his pain began to include his mid-back and neck regions and radiated into his right arm and right leg; that he has not been able to return to work because of his pain and the effect of medications; that he received thrice weekly chiropractic treatments from Dr. F until early April 2002 when he changed treating doctors to Dr. A because of transportation problems. The claimant explained that on the three mornings per week he had chiropractic treatments with Dr. F, he would delay taking his medications and drive himself to Dr. F's office if his wife did not drive him; that his wife had an auto accident which left them with only one car available and his wife unable to drive and he thereafter had no way to get to Dr. F's office; that while he had no problem with his relationship with Dr. F or with Dr. F's treatment, Dr. F was unable to arrange for his transportation to and from Dr. F's office; and that he then changed treating doctors to Dr. A because Dr. A was able to provide him with transportation to and from his office.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues

of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that the challenged findings relating to the injury and disability issues are sufficiently supported by the evidence.

As for the change of treating doctor issue, the hearing officer found that the claimant "changed treating doctors to [Dr. A] because [Dr. F] was unable to provide treatment due to Claimant's transportation difficulties" and that the claimant "did not change treating doctors to [Dr. A] because he wanted to secure a new impairment rating or medical report." Based on these findings, the hearing officer concluded that the claimant "is entitled to change treating doctors to [Dr. A] pursuant to Tex. Labor Code ann. 408.022." The carrier contends on appeal that these findings are against the great weight of the evidence because the claimant was satisfied with Dr. F's treatment and had no conflict with Dr. F. Section 408.022 circumscribes the ability of an injured employee to change treating doctors after the initial selection of a treating doctor and prescribes certain criteria to be used by the Texas Workers' Compensation Commission in granting an employee authority to select an alternate doctor, including those alluded to by the carrier. However, Section 408.022(e)(4)(C) expressly provides that the selection of a doctor because the original doctor becomes unavailable or unable to provide medical care to the employee is not a selection of an alternate doctor. We view this provision as applicable in the circumstances of this case. Further, we are satisfied that the findings complained of by the carrier are not against the great weight of the evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge